

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the "Agreement") is made effective as of the 11 day of September, 2023 (the "Effective Date"), by and between the Plaintiff, Shawn Dean Albrecht, (the "Plaintiff"), and Defendants Westenkirchner, Arob, Sullivan, Wasko, and Bittinger (the "Defendants" or "State"). All of the parties to this agreement are collectively referred to herein as the "Parties" and individually as "Party."

WHEREAS, Plaintiff, Inmate Shawn Dean Albrecht, filed a Summons and Complaint in the present case, *ALBRECHT v. WESTENKIRCHNER, ET. AL.*, 4:22-CV-04174-KES, in the United States District Court for the District of South Dakota, Southern Division (the "Action") on December 19, 2022;

WHEREAS, United States District Court Judge Karen E. Schreier issued a §1915A Screening Order on May 10, 2023, finding that three of Plaintiff's claims survived initial screening;

WHEREAS, Plaintiff entered into this litigation *pro se*, remains unrepresented, and is responsible for advocating his own interests;

WHEREAS, Defendant Westenkirchner is responsible for his independent representation with regard to this agreement;

WHEREAS, the remaining Defendants are represented by the South Dakota Attorney General's Office;

WHEREAS, Defendants deny any constitutional violation as alleged in the Amended Complaint and deny any wrongdoing by any Defendant;

WHEREAS, the Parties wish to amicably settle the disputes between them to avoid further litigation and to avoid the further, expense, delays, risks, and uncertainties of trial and any appeals;

WHEREAS, the Parties are fully advised and informed, after having had the opportunity to discuss the same with their respective counsel, and enter into this agreement knowingly and voluntarily of their own accord and free from any undue influence or duress;

WHEREAS, the Parties intend to wholly resolve this Action; and

WHEREAS, the Parties have entered into settlement negotiations and desire to enter in this Settlement Agreement (the "Agreement").

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. State Performance: Upon approval by the Court of this Agreement, the State agrees to the following:
  - a. The South Dakota Department of Corrections (SDDOC) will expunge the H-5 violation received from Incident #1083180 on March 14, 2022, and the H-5 violation received from Incident #1083185 on March 15, 2022, relating to any of the allegations encompassed within the Complaint filed by Plaintiff in this matter.
  - b. Within ten (10) days of approval of this Agreement by the Court, the SDDOC agrees to pay to Plaintiff \$6,000 in costs, expenses, and other fees, which shall be deposited into Plaintiff's SDDOC Offender Account. This deposit will be made in accordance with SDDOC Policy 1.1.B.2, Offender Accounts and Financial Responsibility, with the exception that the Cost of Incarceration amount will be refunded to Mr. Albrecht and placed in his frozen account.
  - c. The SDDOC agrees and acknowledges that, after the dismissal of this Action, based on this Agreement, it will continue to adhere to its long-standing practice or policy of not subjecting any inmate to retaliation as a result of his having filed a lawsuit against the State. Plaintiff, therefore, will not be subject to retaliation, or other unlawful adverse effect, arising from or relating to his participation in this lawsuit, including, but not limited to, statements he made or positions he advocated in its prosecution.
2. Plaintiff Performance: Upon approval by the Court of this Agreement, Plaintiff agrees to the following:
  - a. Within ten (10) business days of receipt of the payment described in paragraph 1.b. of this Agreement, Plaintiff will voluntarily execute a Joint Stipulation for Dismissal, agreeing to dismiss the pending case, *ALBRECHT v. WESTENKIRCHNER, ET. AL.*, 4:22-CV-04174-KES, WITH prejudice.
  - b. Plaintiff will refrain from filing, and waives any right to raise, any claims resulting from conduct of the SDDOC or its employees related to the incidents addressed in Plaintiff's Complaint or any conduct of the SDDOC or its employees preceding the Effective Date of this Agreement.


3. Attorney's Fees and Costs: All parties will be responsible for their own litigation costs, to include filing fees and attorney's fees.
4. Mutual Release: In consideration of the Payment and other considerations set forth in this Agreement, the Parties hereby completely release and forever discharge each other from any and all past and present claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses, and compensation of any nature whatsoever, whether brought in an individual or official capacity, whether based on a tort, contract, or other theory of recovery, known or unknown, that are in any way related to the claims asserted in this Action or that predate this action. The Parties agree that not only are the Parties hereby discharged and released, but also in like manner, and to the same extent, JOSHUA WESTENKIRCHNER, RING KUOL-AROB, DAN SULLIVAN, KELLIE WASKO, and TERESA BITTINGER, the SDDOC, the State of South Dakota, and all agencies and departments of the State of South Dakota, as well as, where applicable, their officers, officials, employees, agents, legal representatives, and assigns, and all other of the Parties' subsidiaries, affiliates, officers, agents, servants, employees, representatives, heirs and assigns, and all other persons or entities which might be subject to liability arising of the subject matter of this Agreement, and whether such claims may arise in an individual or official capacity.
5. Taxes: Plaintiff understands and agrees that the individually named Defendants and the State of South Dakota and any of its agencies or departments, including, but not limited to the SDDOC, do not have any responsibility for the payment of income taxes or any other tax-related obligations of any kind with respect to the subject settlement money. Plaintiff agrees that he is solely responsible for the payment of any taxes and any liabilities created under the federal tax laws, South Dakota state laws, or any other applicable laws or policies.
6. Entire Agreement; Binding Effect: This Agreement constitutes the entire agreement among the Parties and is binding upon the Parties and their respective successors, heirs, descendants, and legal representatives.
7. No Modification; Waiver: This Agreement may not be modified, except by a writing executed by all Parties. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by all the Parties. No such waiver shall be deemed a waiver of any subsequent breach or default.

8. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, which, together, shall constitute the same instrument.
9. Severability: If any provision of this agreement is found to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.
10. Governing Law: This Agreement shall be governed by and construed in accordance with South Dakota law. Venue for any legal proceeding relating to this Agreement may be commenced in the United States District Court for the District of South Dakota, Southern Division, or in the Circuit Court of the Sixth Judicial Circuit of South Dakota, in Pierre, Hughes County.

9-11-2023  
Date

  
Shawn Dean Albrecht  
Plaintiff

9-12-23  
Date

  
Ring Kuol-Arob, SDDOC  
Defendant


\_\_\_\_\_  
Date

\_\_\_\_\_  
Dan Sullivan, SDDOC  
Defendant


\_\_\_\_\_  
Date

\_\_\_\_\_  
Kellie Wasko, Secretary, SDDOC  
Defendant

9-12-2023  
Date

  
Teresa Bittinger, SDDOC  
Defendant

9/18/23  
Date

  
Joshua Westenkirchner, SDDOC  
Defendant

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9-11-2023  
Date

  
Shawn Dean Albrecht  
Plaintiff


9-12-23

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Date

Ring Kuol-Arob, SDDOC  
Defendant

9/13/23  
Date

  
Dan Sullivan, SDDOC  
Defendant

9-18-2023  
Date

Kellie Wasko  
Kellie Wasko, Secretary, SDDOC  
Defendant

9-12-2023  
Date

Teresa Bittinger  
Teresa Bittinger, SDDOC  
Defendant

Date \_\_\_\_\_

Joshua Westenkirchner, SDDOC  
Defendant